

No. 1-12-3148

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>IN RE MARRIAGE OF ELLEN HOFFENKAMP,</i>)	Appeal from the
<i>RALLA KLEPAK,</i>)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
v.)	No. 06 D 495
)	
DONALD HOFFENKAMP)	Honorable
)	Raul Vega,
)	Judge Presiding.
Respondent-Appellant.)	

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices McBride and Palmer concurred in the judgment.

ORDER

¶ 1 **Held:** Where the language of the trial court order denying respondent's motion to waive child representative fees was insufficient to confer appellate jurisdiction under Supreme Court Rule 304(a), and defendant did not timely appeal from the issuance of a plenary order of protection, the appeal was dismissed.

¶ 2 Respondent Donald Hoffenkamp (Donald) appeals *pro se* from the circuit court's order denying his motion to waive payment of the fees of the court-appointed child representative, attorney Ralla Klepak (Klepak), in the marital dissolution action brought by Donald's now-former spouse, Ellen Hoffenkamp (Ellen). Donald also asserts that an order of protection in favor of Klepak was improperly issued and should be vacated *nunc pro tunc*. Although no

response brief has been filed, Klepak has filed a motion to dismiss that portion of Donald's appeal relating to the order of protection, arguing that the issue is moot because the protection order was vacated. We took Klepak's motion with the case. Having determined that we have no jurisdiction to entertain either claim presented by Donald, we dismiss the appeal.

¶ 3 On January 18, 2006, Ellen instituted proceedings for the dissolution of her marriage to Donald. On June 28, 2006, the court appointed Klepak as the child representative of the parties' two minor children pursuant to section 506 of the Marriage and Dissolution of Marriage Act. 750 ILCS 5/506 (West 2006). A judgment for the dissolution of the parties' marriage was entered on December 11, 2007.

¶ 4 Both before and after the entry of the judgment of dissolution of marriage, extensive litigation was expended on the effect of Donald's alcohol dependency on his right of visitation with his children, Donald's failure to make child support payments and child representative's fees, and other issues.

¶ 5 On March 31, 2011, Klepak filed on her own behalf a motion for injunctive relief and for relief pursuant to section 32-4a of the Criminal Code of 1961 (720 ILCS 5/32-4a (West 2010)). The motion alleged that Klepak was besieged with phone calls and e-mail communications from Donald of a threatening, insulting, and harassing nature, and requested that the court order the Office of the State's Attorney to issue a misdemeanor complaint pursuant to section 32-4a. On April 7, 2011, the court issued an emergency order of protection on behalf of Klepak pursuant to the Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 *et seq.* (West 2010)). On April 28, 2011, a plenary order of protection was issued with a termination date of April 28, 2013. The order required Donald to stay away from Klepak and her law office and to limit contact with her by U.S. mail solely of filed pleadings, motions, and notices of filings. On May 27, 2011, Donald filed a motion to reconsider the plenary order, which was denied on July 14, 2011. No notice of

appeal was filed from entry of the plenary order of protection or denial of the motion to reconsider. Donald's brief states that the order of protection was "dismissed on December 27, 2012 on grounds of 'lack of jurisdiction' ." Klepak's motion to dismiss asserts that on December 27, 2012, the trial court, *sua sponte*, and without notice to her, vacated the April 28 plenary order of protection. The record on appeal does not contain an order vacating the order of protection.

¶ 6 On June 23, 2011, Donald filed an application to sue or defend as an indigent person pursuant to Illinois Supreme Court Rule 298 (eff. Nov. 1, 2003) and section 5-105 of the Code of Civil Procedure (735 ILCS 5/5-105 (West 2010)), seeking leave to defend the suit without having to pay fees associated with the suit. On that date, another judge of the circuit court entered an order permitting Donald "to sue or defend without payment of fees, costs or charges."

¶ 7 From time to time, Klepak would submit billings to the parties for her services as child representative, and the court ordered payment of Klepak's fees, apportioned between the parties. On June 28, 2012, Klepak filed a petition for adjudication of indirect civil contempt against Donald for his failure to pay his share of fees to Klepak as ordered by the court. On July 26, 2012, Donald's response to Klepak's motion challenged his payment of fees to her as the child representative on the basis that the order of June 23, 2011, required that the court waive "GAL fees." On September 21, 2012, Donald filed a motion to dismiss Klepak's fees on the basis that he was not liable for the fees due to his "status as an indigent person." On October 1, 2012, the court entered an order denying Donald's motion. The order stated in its entirety:

"This matter coming on Respondent's motion to waive child rep fees. Respondent appearing pro se. Petitioner present through counsel.

It is ordered: (1) Respondent's motion is denied; there is no basis to waive Ralla Klepak's fees. (2) This is a final and appealable order under IL code of civil procedure."

¶ 8 At the time of the entry of that order, other issues remained, including an outstanding court order requiring Donald to obtain employment and produce a job search diary and requiring Donald to seek professional remediation on an ongoing basis.

¶ 9 Donald timely filed a notice of appeal on October 24, 2012. The notice of appeal sought to appeal from both the order of October 1, 2012, denying Donald's motion to waive child representative fees, and the issuance of the plenary order of protection on April 24, 2011.

¶ 10 On appeal, Donald contends that the court erred in refusing to waive payment of Donald's share of Klepak's fees as child representative. Donald asserts that the order of June 23, 2011, permitted him to "sue or defend without payment of fees, costs or charges" and that said "fees" included Klepak's fees as child representative.

¶ 11 We need not reach the merits of defendant's claim, as we conclude that the language of the order of October 1, 2012, was insufficient to confer appellate jurisdiction under Supreme Court Rule 304(a) (eff Jan. 1, 2006). Rule 304(a) states in pertinent part: "If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims *only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both.*" (Emphasis added.) Thus, "a circuit court order accompanied by language indicating that it is 'final and appealable,' but not referencing immediate appeal, the justness of delay, or Rule 304(a), does not trigger the rule." *Palmolive Tower Condominiums, LLC, v. Simon*, 409 Ill. App. 3d 539, 544 (2011). Here, the order stated that it was a final and appealable order, but it failed to state that it was immediately appealable and that there was no just cause for delay. Thus, the

order did not evince an application of the court's discretion that the case be immediately appealable. Therefore, as unresolved issues still remain in the underlying action and jurisdiction remains with the trial court, we must dismiss Donald's appeal from the court's order of October 1, 2012, as premature.

¶ 12 We must also reject Donald's claim with respect to the plenary order of protection of April 28, 2011, on the basis that we have no jurisdiction, as Donald failed to timely appeal from the issuance of that order, and as the order subsequently expired or was vacated. Klepak instituted the action resulting in orders of protection by filing a motion for injunctive relief on March 31, 2011. On April 7, 2011, an emergency order of protection was issued. A plenary order of protection was issued on April 28, 2011, with a termination date of April 28, 2013. Donald filed a motion to reconsider on May 27, 2011, which was denied on July 14, 2011. Donald's notice of appeal was not filed until October 24, 2012.

¶ 13 A petition for a protective order filed in a marital dissolution case is a separate claim and is not an ancillary part of the claim for dissolution. *In re Marriage of Gordon*, 233 Ill. App. 3d 617, 627 (1992); *In re Marriage of Fischer*, 228 Ill. App. 3d 482, 487 (1992). A plenary order is the final order in an order of protection case. *Scheider v. Ackerman*, 369 Ill. App. 3d 943, 945 (2006). A plenary order of protection becomes appealable when entered. *In re T.H.*, 354 Ill. App. 3d 301, 307-08 (2004) (overruled on other grounds); see *In re Marriage of Gordon*, 233 Ill. App. 3d 617, 627-28 (1992). Here, the plenary order of protection resolved all issues raised in Klepak's motion for injunctive relief and became a final and appealable order from which Donald failed to timely appeal.

¶ 14 Moreover, although the emergency order of protection and the ensuing plenary order of protection were entered pursuant to the Illinois Domestic Violence Act of 1986, the order compelled Donald to stay away from Klepak and her law office and to refrain from

communicating with her by phone or e-mail. We conclude that the order was injunctive in substance, and an order granting or refusing to dissolve an injunction was required to be appealed within 30 days of entry pursuant to Supreme Court Rule 307(a)(1), (7) (eff. Mar. 20, 2009). *Fischer*, 228 Ill. App. 3d at 486-87. Here, no timely notice of appeal was filed.

¶ 15 Even if a timely appeal from the plenary order of protection had been taken, the order either was vacated on December 27, 2012, as both Donald and Klepak represent, or expired on its own terms on April 28, 2013; and both dates have passed. As a general rule, dismissal of an appeal is appropriate if the question has become moot, as in the case of an order of protection which by its own terms has expired. *In re Marriage of Savas*, 139 Ill. App. 3d 68, 79 (1985). Here, the order of protection either was vacated by the trial court or expired on its own terms, in either case subsequent to Donald's filing of his notice of appeal. We generally do not review moot cases or render advisory opinions. *Creaser v. Creaser*, 342 Ill. App. 3d 215, 219 (2003). As Donald has made no claim that he sustained prejudice by the entry of the order of protection and does not address whether any exceptions to the mootness doctrine apply, we decline to address the possible exceptions to the doctrine.

¶ 16 In light of the foregoing, we conclude that we lack jurisdiction over both of the claims Donald raises and, therefore, need not rule on Klepak's motion to dismiss based on mootness.

¶ 17 Dismissed.